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IN THE UNITED STATES DISTRICT COURT
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                        FOR THE DISTRICT OF MARYLAND
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                              SOUTHERN DIVISION
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    UNITED STATES OF AMERICA,
                                    ) CRIMINAL
                                      NO. PJM-21-502
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               Plaintiff,
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    DE AUNDRE TYRIQUE KEYS,
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               Defendant.
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                 TRANSCRIPT OF SENTENCING PROCEEDINGS
                BEFORE THE HONORABLE PETER J. MESSITTE
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                     UNITED STATES DISTRICT JUDGE
                WEDNESDAY, JANUARY 18, 2023; 2:39 P.M.
                          GREENBELT, MARYLAND
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    APPEARANCES:
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          ***COMPUTER-AIDED TRANSCRIPTION OF STENOTYPE NOTES***
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(Call to order of the Court.)
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              THE COURT: Good afternoon, folks. Have a seat,
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            All right, Madam Clerk.
    please.
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              THE DEPUTY CLERK: The matter now pending before this
    Court is Criminal Case No. PJM -- Your Honor, just a moment.
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          I will begin again. The matter now pending before the
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    Court is Criminal Case No. PJM-21-0502, the United States of
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   America vs. De Aundre Tyrique Keys. The matter now comes
    before the Court for a sentencing.
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              THE COURT: All right. Counsel, identify yourselves
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    first for the government and then defendant.
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              MS. COLLINS: Good afternoon, Your Honor. Jessica
    Collins on behalf of the United States. With me at counsel
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    table is DEA Task Force Officer Mark Howard, and also present
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    in the courtroom are family members of the victim in this case.
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              THE COURT: I'm sorry.
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          (Discussion off the record.)
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              THE COURT: Mr. Keys, can you hear me now?
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              THE DEFENDANT: Yes, sir.
              THE COURT: All right. For the defendant?
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              MS. FITZGIBBONS: Yes. Thank you, Your Honor.
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    Fitzgibbons, Assistant Federal Public Defender, on behalf of
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    Mr. De Aundre Keys, who is present.
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              THE COURT: All right. With regard to the
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    presentence report, any issues from the government or the
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defendant? I think the government had some, perhaps, technical 1 difference on the calculation. Ms. Collins? 2 MS. COLLINS: Your Honor, as I noted in our 3 memorandum, there was a difference in the calculation from the 4 5 plea agreement and the -- and the PSR. It didn't ultimately result in any change to the recommended -- or to the advisory 6 7 guidelines range, but the PSR did apply a two-level enhancement 8 for possession of a firearm which was not contemplated in the plea agreement. THE COURT: Well, what -- what is your suggestion as 10 11 to how I register this? 12 MS. COLLINS: So, Your Honor, I noted that in light of our obligation to -- to honor our plea agreement 13 14 stipulations. Again, I don't actually think the Court needs to address it because it doesn't ultimately impact --15 16 THE COURT: Well, I do in the sense I have to make a 17 I mean, I have to report what the numbers are. report. First 18 thing I need to do is state the offense level and then the 19 criminal history. Now, where the sentence goes is a different 20 matter. 21 MS. COLLINS: Yes, Your Honor. And, again, I -- I 22 don't have either a dispute with the underlying facts or with 23 the -- the legal application of that enhancement, but we are 24 obligated to comply with our plea agreement stipulations which 25 did not include that two-level enhancement.

THE COURT: Ms. Fitzgibbons, what's your position on 1 2 that? Are you agreeable to listing it as a criminal offense 3 level 42 or 40, what? Because I have a criminal history 4 category of V. 5 MS. FITZGIBBONS: Yes, Your Honor. We take no issue with the criminal history category. Typically, we -- I have 6 7 seen judges adhere to what the parties agreed the guidelines 8 were in the --THE COURT: Well, shall I list it as a 40? 10 MS. FITZGIBBONS: That would be our position, yes, 11 Your Honor, because it's consistent with what we agreed to. 12 THE COURT: The Court will then find the offense 13 level to be 40 and the criminal history category to be a V. So 14 -- and, again, just for purposes of the record, I know this is 15 a "c" plea, but with regard to the -- the first count in the 16 case, the guideline range is 360 months to life. The plea 17 agreement provision is 120 to 144 months. 18 And with regard to Count Two -- the Court clerk reminds 19 me you can take your masks off when you are addressing the 20 Court if it's easier. It's easier to hear you. With regard to 21 Count Two, the guideline range is -- well, 360 months to life 22 is the overall range. 120 months is the guideline -- is the 23 plea agreement range. 24 Supervised release as to Count One is at least three

years; Count Two, one to three years; a fine range is 50,000 to

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\$100,000; and the special assessment, then, would be \$100 on 1 Count One and \$100 on Count Two. 2 3 And I gather with the plea agreement, you treat them as 4 two separate offenses. Is that correct, Ms. Collins? 5 MS. COLLINS: That's correct, Your Honor. THE COURT: All right. So with those numbers in 6 7 mind, I will hear you on allocution, Ms. Collins, first. 8 MS. COLLINS: Your Honor, before I begin to allocute, 9 I do have three members of the victim's family present who I 10 believe would like to address the Court. 11 Would you like me to speak first or --12 THE COURT: That's fine. I don't know that they need 13 to take the stand. They can come to the podium. But I'd like 14 them to identify themselves by name and what their relationship 15 to the case is. 16 MS. COLLINS: Thank you. I believe this is the victim's brother who is addressing the Court first. 17 18 WILLIAM WOODWARD: Hello, Your Honor. My name is 19 William Woodward, Billy Woodward. Aubrey was my baby brother. 20 He was a bright light who had faced multiple hardships in his 21 life, yet maintained a sense of youthful exuberance and a 22 thirst for life. He was an avid fan of the outdoors. 23 sincerely enjoyed cooking for friends and family. Aubrey was 24 full of humor and always on the lookout for the enjoyment that

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life could provide.

I love my baby brother and he loved me. He was a straight shooter, and I always admired that. So many beautiful qualities that simply shined through him were admirable. He was always quick with a joke and a smile. He was full of charm and had the uncanny ability to start a conversation with absolutely anyone. It was awe inspiring. I always told him that when he found the crossroads of personal passion that also leveraged his communication skills, that the sky was going to be his limit.

But most of all, it was his never-ending reminder that we were family for better or for worse. When times were tough and relationships strained, he would toss that fact out there. Love and loyalty was his motto, and he did his best to abide by it.

Eight years separated us, yet we did our best to make up for that gap. We had our hardships and faced the distinct challenges that only come from the relationship between two brothers.

He was always a free spirit, while I was a bit more grounded. This led to turbulent points, but that turbulence ultimately acted as a catalyst and a challenge for us to improve upon our relationship. We had worked hard during the pandemic to mend our brotherhood, and it showed. That is something that I truly cherish, but that also hurts my heart to know that we had so many special times ahead of us that in an

instant were destroyed.

He was my baby brother. He was my only brother. And he was robbed of his life; robbed of his future; robbed of knowing my son, his nephew; robbed of holding him in his arms; robbed of every sunrise and sunset; robbed of easy lifes and cold beers; robbed of family gatherings during holidays; robbed of the freedom and life that he so enjoyed. Aubrey was robbed.

I will forever carry this grief until the end of my days. In fact, I have come to understand that the difficult truth about grief of this nature is that it doesn't get easier. The cliches are true. You simply learn to live with it. As much as it hurts my heart and my soul to even consider having to live without Aubrey in my life, it's a fact that I must accept. The cold truth is a piece of me left the day that we lost him. I am forever less without my brother in the world. And it's not lost on me that this happened almost ten years to the day that we lost our mother to whom he was so incredibly close.

Morality is something I hold dear. I am someone who truly believes in right and wrong. What Mr. Keys did resides in the darkest sense of wrong. His actions directly led to the death of another human being. That person happened to be my brother. His actions led to the death of my brother.

How many others could or have been affected and could have been the victim of Mr. Keys' actions?

Aubrey meant so much to so many, and now we are left to

live in the void that he's left behind. I will miss him forever. I will love him forever. My heart and my soul are forever burdened, and I so wish this had never happened.

Thank you.

THE COURT: Ms. Collins, anyone further?

MS. COLLINS: Yes, Your Honor. I believe next is the

THE COURT: All right.

victim's father, William Woodward.

WILLIAM WOODWARD: Your Honor, my name is William Woodward. Aubrey was my son. Aubrey was an upbeat man, full of life and vigor. Aubrey was quick with a joke and laughter. Aubrey was always good natured and had many friends. Aubrey called me every day to see how I was doing, to see if I needed any help with anything. And in the summer months, we spent time fishing and crabbing. Aubrey was instrumental in a boat trailer to launch so we could go spend some time on the Chesapeake Bay.

I have a small farm. Aubrey was always there to help with all of the work -- work and getting equipment. Aubrey helped repair the barn and cutting grass and clearing land. Aubrey helped clear the flagstone patio in the backyard.

Aubrey always told me numerous times that he would always be there whenever I needed him. Aubrey also told me that he was -- that I was getting old. I am 75, and Aubrey assured me he'd never let me be alone, and that he was concerned that I

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would be put in a nursing home. He said he would never let 2 that happen. He was a very concerned and loving son. I don't 3 feel I need to go into any kind of nursing home or anything 4 like that. I am in good health. 5 On March 1st, 2021, Aubrey called me when I was on my way to the pharmacy to receive my first COVID-19 shot. Aubrey was 6 7 pleased that I was getting the shot and asked me to call him 8 afterwards and -- when I was done, and we could get together and do something. After I was done at the pharmacy, I failed to call Aubrey, much to my regret. After I was home for some time, I received a call that my son had been killed by fentanyl 12 poisoning. 13 Whenever my son's name, Aubrey, is spoken, I must fight 14 back tears; let alone thinking of him, I become lost and 15 emotionally break down. My heart is broken because of his 16 loss. 17 Thank you. 18 MS. COLLINS: Thank you, Your Honor. 19 And, finally, the victim's sister, April Woodward. 20 THE COURT: All right. 21 APRIL WOODWARD: Good afternoon, Your Honor. My name 22 is April Woodward. Aubrey was my little brother. His name was 23 Ralph Aubrey Woodward. He was my best friend, my rock.

My little brother was drastically taken from us March 1st, 2021. I have been impacted so much that I went into

rehabilitation in order to get off Suboxone and received mental health -- health help before the year anniversary of his death. I did this because I honestly didn't trust myself to properly deal with the pain on that day.

I wake up every morning reliving the fact that my little brother is gone. I can never talk to him, hug him, or even just see his smile.

You have no idea how important Aubrey was. He had a huge heart and helped everyone. He could make anyone smile when they were down. He was a light worker and angel on earth. He was taken by that man's hand when he gave my brother a death sentence in the form of fentanyl. That was not his place. This was done out of man's hand, not God's. I pray every day for it to be a nightmare and that my brother would run through the door with a huge smile on his face asking if I am okay or if I need anything. Now I have to turn to the sky or stand at his grave and speak with no words returned; no smile; no hugs; no contact ever again ever.

This man wakes up every day. He may be behind bars, but he breathes the same air. He gets to contact family. My brother's life, however, has been stolen by this man. My brother no longer wakes up or breathes air. We can't see him anymore because of this drug dealer. I can't express in words how much I am impacted every second of every minute to every hour consumed in days and months and now almost two years. I

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feel lost without him. Forever there will be a hole stolen
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    from my heart and soul because he is no longer alive.
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          Thank you, Your Honor.
              THE COURT: All right, Ms. Collins.
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              MS. COLLINS: Thank you, Your Honor.
          Consistent with the plea agreement in this case, we are
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    requesting a sentence of 144 months on Count One and 120 months
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    on Count Two, and we are asking that those sentences run
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    concurrently to one another but consecutive to any term of
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    imprisonment that has been imposed in a separate state case
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    with respect to the defendant. And, specifically, as reflected
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    in the PSR, the defendant was sentenced for firearms offenses
    in the Circuit Court for St. Mary's County to ten years, as
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    well as to three years and six months on a probation violation
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    for a prior CDS possession with intent to distribute
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    conviction.
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              THE COURT: All those sentences have been imposed
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    now? He's currently serving those sentences?
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              MS. COLLINS:
                            That is correct, Your Honor. They were
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    imposed last February, and he is currently serving those
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    sentences in the custody of the State of Maryland.
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              THE COURT: And they are all in Saint Mary's County
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    Circuit Court?
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              MS. COLLINS: Yes, Your Honor.
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              THE COURT: All right.
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MS. COLLINS: Your Honor, I will -- I want to begin with the nature of the offense in this case because it is unquestionably serious and I would submit among the most serious type of offenses we see in this court. The defendant was engaged in the distribution of fentanyl, a notoriously dangerous substance because of its strength. It's far more potent than heroin and many other opioids, such as oxycodone, which makes it far more likely to result in overdoses and in overdose deaths, which, unfortunately, we do see in this court.

And the defendant chose to put that dangerous and deadly substance out into the world, and the results here were tragic. The defendant sold fentanyl that was used by the victim, and as a result, the victim overdosed and died.

And the Court has just heard from family members of the victim, so I won't try to restate what they have already told to the Court, but these statements do reflect the devastating impact of the defendant's crime, an impact that has reverberated across his family. It's not only the immediate loss of the victim, but also the ongoing loss of his love and companionship and the grief and the devastating impact that this has upon his family members moving forward.

On top of this serious offense, the defendant also chose to possess a firearm and ammunition. Following the victim's death, when law enforcement executed a search warrant at the defendant's apartment, they found a loaded firearm with an

extended magazine loaded with 21 rounds of ammunition. They also found additional rounds of ammunition and magazines and more than 30 grams of a fentanyl mixture.

So not only did the defendant have and sell a particularly dangerous drug, he also had a dangerous and deadly weapon, a firearm that he was prohibited from possessing as a result of his prior felony convictions.

Given the seriousness of the defendant's conduct and the threat it posed to the community, a very substantial term of imprisonment, we would submit, is appropriate here.

These offenses shouldn't be viewed in isolation, but rather against the defendant's prior criminal history. Although relatively young, the defendant had amassed a significant history prior to committing these offenses. Of particular note, in 2019, he was charged with CDS possession with intent to distribute a narcotic in St. Mary's County and convicted of that, and he was still on probation for that conviction when he committed the offenses in this case.

In addition, while he was on that probation in October 2020, he was caught with a firearm and ammunition. That is the -- the firearms conviction from last February that I just mentioned and that he is serving a sentence for at this point in time.

THE COURT: How long has he been in custody on those charges?

MS. COLLINS: Your Honor, I would have to consult the 1 PSR. 2 3 THE COURT: Approximately? MS. COLLINS: I believe he has been in custody since 4 March of 2021 when the search warrant happened in this case. 5 6 THE COURT: But the additional -- the time that he 7 has on the state sentence adds up to what at this point? Give 8 me the numbers that add up from --9 MS. COLLINS: So he was sentenced to ten years in the state, in the new state conviction and then three years and six 10 11 months consecutive, so a total of that would be 13 years and 12 six months. 13 THE COURT: All right. 14 MS. COLLINS: And I believe that this was referenced 15 in the defendant's sentencing memorandum. I believe on the 16 ten-year sentence, it is five years before he would be eligible 17 for parole in that case. 18 So, Your Honor -- but I would note after he was caught 19 with this firearm in October of 2020, it was just five months 20 later, in March of 2021, when the events in this case took 21 place where he sold the fentanyl that resulted in the victim's 22 death and also was found in possession of a new firearm and 23 ammunition. 24 Now, I would also note that both the PSR and the 25 defendant's sentencing memorandum highlighted certain

challenges in the defendant's background, including an early history of substance abuse, and we do believe that those factors are recognized in the agreed-upon range set forth in the plea agreement.

The defense's sentencing memorandum also notes the sentences that were imposed in a number of other overdose cases resulting in death, and it's always difficult to compare cases because of the different characteristics and facts in each case, but I -- I would note that those cases did not -- I reviewed them and I didn't see a reference in any of them to also having possession of a firearm. So this is certainly, I think, at the more serious end of these sorts of cases in light of the possession of the firearm in addition to the -- the distribution offense.

So the Court has discretion about whether to order the sentence in this case to run concurrently or consecutively or partially concurrently to the defendant's state sentences, and we do believe that given the exceptionally serious nature of the offenses here, as well as the defendant's history and particularly his criminal history leading up to these offenses, that a consecutive sentence is appropriate.

Now, the defendant's state sentences are for unrelated conduct for possessing the firearm in October of 2020 and for the probation violation, and that was just months -- that -- excuse me -- just months after possessing that firearm in

that?

October of 2020 that led to the state conviction, he was then caught with an additional firearm and ammunition in this case.

And as reflected in the statement of facts here, the defendant was not only under court supervision but was actually wearing an ankle monitor when he committed the crimes in this case, and even this heightened level of supervision did not deter the defendant's criminal conduct.

So given the ongoing, repeated nature of the defendant's conduct and the fact that he continued to engage in this conduct even after incurring new state charges, we believe a consecutive sentence is appropriate for these new, separate, and extremely serious criminal offenses.

Finally, Your Honor, I would note that yesterday we did submit a supplement requesting restitution in the amount of \$12,458 for funeral expenses for victim one, and that filing had documentation attached to it regarding those expenses.

THE COURT: Have you seen that, Ms. Fitzgibbons?

MS. FITZGIBBONS: I have, Your Honor.

THE COURT: Are you going to have any issue with

MS. FITZGIBBONS: No, Your Honor. I would just ask that the government, consistent with the plea agreement, recommend that the assets that were seized be applied to the restitution. There were -- there was a significant amount of money that was seized that can be applied towards the

restitution immediately. 1 2 THE COURT: What's the government's position on that, Ms. Collins? 3 MS. COLLINS: Your Honor, as I am sure the Court 4 knows, pursuant to the regulations, we can recommend that. 5 That is not ultimately within the discretion of our office, but 6 7 it is a recommendation that we make to the -- the money 8 laundering unit within the Department of Justice and --9 THE COURT: Well, the Court, in ordering payments to 10 be made, can order restitution immediate insofar as assets are 11 available, and then there would be the order of further cash 12 I assume there are -- there are -- well, further restitution. 13 cash restitution is out of earnings, for example, from working 14 in custody, so I would have to make a decision about that. 15 wouldn't have a problem doing that. And then insofar as -- I don't know whether it's the Bureau of Prisons who decides --16 it's the U.S. Attorney, isn't it, who decides what assets get 17 18 applied to what? 19 MS. COLLINS: So, Your Honor, with respect to assets 20 that were seized and then forfeited, it is something where our 21 office makes a recommendation to the money laundering unit, and 22

they ultimately make the determination. Generally speaking, with a defendant such as Mr. Keys where he doesn't have other assets, I expect that that would occur, but I can't make a commitment because it's simply, under the regulations, not

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within our office's --
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              THE COURT: Well, I can make an order. I mean --
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              MS. COLLINS: Yes, Your Honor.
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              THE COURT: Okay. Understood. Is there a separate
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    restitution order, though, anywhere proposed?
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              MS. COLLINS: Your Honor, I believe that -- I did not
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    propose a separate restitution order. I believe that's usually
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   within the judgment as opposed to forfeiture, which usually I
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    believe --
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              THE COURT: I have $7,080 seized, but on the motion
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    for restitution -- let me just see that. There is a
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    supplemental motion which is there, and there is an invoice.
    So would -- the restitution would be made to Mr. Woodward, the
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    father of the victim?
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              MS. COLLINS: Yes, Your Honor.
              THE COURT: Okay. $900 I think it said. All right.
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    Very good.
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              MS. COLLINS: Thank you, Your Honor.
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              THE COURT: Ms. Fitzgibbons. Ms. Fitzgibbons.
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              MS. FITZGIBBONS: Thank you, Your Honor.
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          Your Honor, we are also joined in the courtroom by
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    members of Mr. Keys' family, including his mother, brother, and
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    family friends.
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          Your Honor, I am asking that the Court accept the
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    parties' "c" plea recommendation of ten to 12 years, and I will
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start with the nature and circumstances of the offense and then speak to the issue of how the time should run.

Undoubtedly, this is a serious offense. I don't want it to be lost on the Court that this was an indirect drug distribution, and I mentioned this in my sentencing memorandum and it's in the statement of facts, it's not contradicted, but Mr. Keys distributed to Individual A, who is not charged in this case, and then that individual provided these drugs to the victim. They -- both these individuals used, and, tragically, the victim passed away and Individual A did not.

I think of these cases as almost like cases of Russian roulette. It's like handing, you know, a gun with one round in the chamber to someone who is an addict, and, unfortunately, and very, very tragically and sadly for this family, their loved one was lost. Mr. Keys is remorseful for what happened.

And I provided the sentencing ranges in the defendant's sentencing memorandum just to give the Court an idea of where this district sentences in these type of offenses. So to give the Court some idea that the parties' range is consistent with other sentences for similarly situated --

THE COURT: I don't know that I have had a sale of drugs resulting in the death of a victim, though.

MS. FITZGIBBONS: I'm sorry, Your Honor?

THE COURT: I don't know that -- I can't recall in all my time in sentencing for drug distribution type offenses

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that the victim has died. This is a somewhat startling and
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    stark, if you will, factual difference between this case and
    many others. If there is any equity in all of this, it's that
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    there is a lot of time added at the state level already, but to
    say that this sentence compares with other distribution type
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    cases is really not a very persuasive argument.
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              MS. FITZGIBBONS: And I agree with the government
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    that it's, you know, it's very difficult to compare one case to
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    another, but of the cases that I have listed, several of these
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    involved sale for money.
                              They weren't just --
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              THE COURT: But not deaths?
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              MS. FITZGIBBONS: They all involved death, Your
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    Honor.
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              THE COURT:
                          They did?
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              MS. FITZGIBBONS: Yes. Yes. Every one of them, or I
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   wouldn't have represented that to the Court.
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              THE COURT: All right.
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                                But, again, I agree with Your
              MS. FITZGIBBONS:
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    Honor, I agree with Ms. Collins, there are no exact matches.
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    They are there to give the Court an idea that we are in the
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    right ballpark when we are asking the Court to accept the "c"
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    plea range that we have proposed.
          With respect to how the Court should run the sentence
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    with respect to the undischarged state time, which is about 13
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    and a half years, and if all that time were to run, he would be
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released from that sentence in 2033 -- from those sentences in 2033. And, ordinarily, we wouldn't be having this conversation if the cases were unrelated. Factually, these cases are unrelated.

My issue, as I laid out in the sentencing memorandum, is the Court has discretion in cases like this for circumstances like this. There is flexibility where -- the Assistant State's Attorney used this case in the state sentencing as an aggravating factor, and Mr. Keys received the maximum penalty in that case. Ten years was the top of his state guidelines in that case. The Assistant State's Attorney argued to the judge that he should consider this case, gave Judge Stanalonis the police report in this case, gave the judge photos from the phone in this -- in this case. So I agree, maybe ordinarily it's perfectly appropriate to run separate cases consecutively, but this is not on all fours with that situation, and so that's why I am making that request of the Court.

I think the other piece of this -- yeah. I'm sorry, Your Honor. Did you -- I thought I heard...

The other piece of this is when we negotiated this plea agreement, it was not clear what was going to happen in that state case. When I started with Mr. Keys, it was a misdemeanor firearms offense, and then he elected to go to trial which then increased the seriousness of the -- of the charges.

The fact of the federal detainer, obviously, the cases

impact each other in other ways, one of which being I thought Mr. Keys and Judge Stanalonis had a very productive conversation at his sentencing about the possibility that he would go to a DOC facility that specialized in providing mental health treatment, that specialized in youthful offenders, and Mr. Keys was receptive to doing that, but the federal detainer prevented that from happening. So, for all of those reasons, this is a situation where it would be appropriate to consider a concurrent or partially concurrent sentence.

And in making that determination, obviously, the Court applies the 3553(a) factors, and I highlighted them in my memo to the Court, but perhaps I think the most compelling of those factors is Mr. Keys' age. He will turn 26 here at the end of the month.

And I fleshed out some of the information that he provided to Probation, but you can see, and I know Your Honor has taken the time to look at -- to look at that, but Mr. Keys did not have a male role model growing up, and the one that he had was abusive, was incarcerated, was absent, and that put his mother in a very difficult position. She's very hard working. I am very happy that she was able to take a day off to be here, but she works constantly, and she was trying to raise him as a single mom, and as a result, they moved constantly.

And I know you are thinking to yourself, Well, what's the big deal there? But the big deal there was places where he

should have gotten help, things were missed, and these aren't little things that were missed. The fact that he has a hearing impairment really wasn't identified until he was nine years old, so going to the first four or five years of his educational career, he couldn't hear, so he was not successful.

And then he came into his middle school years struggling with that impairment, along with ADHD and some other mental health issues that the school system tried to address, but by fifth grade, he was woefully behind. I gave the Court an idea of some of his test scores, you know, being 12 years old and, you know, reading at the level of a seven or an eight year old. It -- school was not a place where he could be successful, although he tried.

And one of the bright places in his education is really the opportunities that he had to participate in sports and athletics because I think that gave him some positive reinforcement, but, unfortunately, failing in school, he's not able to necessarily to do that with the consistency that he needed to.

The school records also, in addition to the learning disability and the hearing loss, also talks somewhat to his substance abuse, testing positive for marijuana from the age of 11 or 12 and using alcohol, and I think, like I said, some of this was, from a very early age, a lack of resources to pay the type of attention that was needed to get him on track sooner.

And what I see that he's done that's positive, and I -- and I know the Court is not surprised by this because you see this sometimes where an individual will have two or three prior convictions but never have served a sentence, like, in the DOC or in the BOP, and this is also a situation where when Mr. Keys was sentenced in St. Mary's County, that this is his first experience with the Department of Corrections. The prior sentence was served locally and then in the detention center.

And so what he's done -- although he is not at Patuxent where I think he would be making more progress, he's at Western Correctional Institution up in Cumberland -- he put his name immediately on the G.E.D. list. He's now enrolled in the G.E.D. program, and I am hoping that he can test and do the things that he needs to do so when he moves into BOP, he can take advantage of the vocational programs we will ask the Court to recommend.

So, we have talked about the fact that this is a significant sentence regardless of how the Court runs it, particularly in light of his age, and it's our expectation that when he moves to the Bureau of Prisons, he'd be designated to a medium facility, and we would ask that the Court recommend --

THE COURT: Sorry. Go ahead.

MS. FITZGIBBONS: -- I would ask that the Court recommend Petersburg and specify that he take part in the carpentry program there; Beckley also has a carpentry

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vocational program and carpentry and masonry; and then Hazelton
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    has a vocational program in welding that Mr. Keys would intend
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 3
    to take advantage of.
 4
          And, finally, as the Court can see, Mr. Keys has
 5
    significant support in the community, not just his mother, but
    also his mentor that I discussed in my sentencing memorandum,
6
 7
    and he's been a little far from them in Cumberland, but it's my
8
    hope that they can continue, and they will, I know they will --
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              THE COURT: Sorry. Are you recommending Petersburg
10
    or Cumberland? I am not sure what you are saying.
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              MS. FITZGIBBONS:
                                He is at Cumberland now, Your
12
            I am recommending Petersburg for -- for the federal
13
    sentence and then Beckley in West Virginia and then Hazelton,
14
    which is also in West Virginia, and all three of those have
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    vocational programs, that we would ask the Court recommend that
16
    he participate in vocational programming at those facilities.
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              THE COURT:
                          Okay.
                                Anything else?
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              MS. FITZGIBBONS:
                                No. Your Honor.
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              THE COURT: Mr. Keys, do you want to address the
20
    Court?
           I assume you have had an opportunity to talk to judges
21
    before.
             Here is your opportunity before this judge.
22
              THE DEFENDANT: Yes, sir. I wrote a letter.
                                                            I am
23
    going to let my lawyer read it for you all if that's okay?
24
              THE COURT: All right.
25
              THE DEFENDANT:
                              Thank you.
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MS. FITZGIBBONS: Thank you, Your Honor.

First thing, I want to express my condolences for the family that was impacted by my actions. My intentions were never to see someone die. It took me a long time to understand and accept how what I did was wrong. I now understand that addiction is a powerful thing. You can be a victim of it. By selling, I was providing a temptation, and I realize how wrong that is.

I have been trying to choose the right road both for my safety and the safety of others. I accepted responsibility for the -- I accept and accepted responsibility for the consequences of my actions. I don't want this to define who I am.

THE COURT: Is that it? Anything further from Mr. Keys?

MS. FITZGIBBONS: No, sir.

(It is the policy of this court that every guilty plea and sentencing proceeding include a bench conference concerning whether the defendant is or is not cooperating.)

THE COURT: Some of this has been by way of explanation to both families, the victim and the perpetrator. This is a plea agreement where the government and the defendant, through defense counsel, have negotiated a sentence in this case, and not just one where there is an admission of guilt, but really a binding range on the Court as to what the

outcome should be.

These are unusual, and I think both counsel know that I am not a great fan of what are called binding plea agreements. I usually like to have completely unfettered control over the decision that I make in a case. But I understand that the way the criminal justice system works in this country, that in order to avoid complicated trials and put -- putting families through trauma and so on, it's important to allow these -- this plea agreement process to go forward, and that's what happened in this case.

And counsel have agreed between themselves, in consultation with the defendant and I suspect the families, that this range of sentence, which could be as high as 144 months but not higher in this case, would be acceptable. Could be lower according to the range as well. It could be 120 months, I suppose. But in any event, the Court would be bound by the -- that sentence.

And I did talk to counsel on the phone before we came here to be sure that it was the kind of plea that I was prepared to accept, and I did indicate on the phone back several months ago that I would accept. And I don't usually take more than three or four of these a year, and, otherwise, I don't accept them because when you look -- that's sort of part one of what I want to say.

The other part in terms of sentencing is that it used to

be that a judge was completely unfettered in terms of what a sentence ought to be, all the way up to the statutory maximum that was allowed in a case, so that in a case like this with regard to, let's say, the distribution count, the statutory provision would have allowed for 20 years on Count One and two more years -- sorry, up to ten years more as to Count Two. That would have been 30 years that the Court, under the statutory guidelines, could have given this defendant. That's not, obviously, what he is going to get because that's not what the parties have agreed to.

But the problem with the fact that judges were unfettered with regard to the sentencing guidelines is that judges were all over the place in similar cases all over the country, and even within the same court, people who were similarly situated would get sentences that were wildly disparate. And so the concept came in of sentencing guidelines where Congress, particularly at the federal level, set up a Sentencing Commission composed of judges, lawyers, academics, and others that would try and evaluate different kinds of crimes, different kinds of aggravating and mitigating factors with regard to a particular defendant, the nature of the crime, and come up with a range of sentence that they felt was more plausible, and it would be more or less uniformly applied across the country.

That was the idea of the sentencing guidelines. In fact,

they were mandatory at one point, and judges such as me had to apply them unless I could find a very good reason not to. Now I have to take them into account, but I am not bound by them.

So that's really the idea when you put together, first of all, the need and the propriety of negotiating pleas, and then the idea that there is a sentencing guideline range that talks about a case, that's what the judge gets delivered to him or her at the outset before I even touch the case.

So, here, frankly, the guideline range was not only 144 months -- up to 144 months from 120 in Count One, but an additional 120 months that could have been added to that under the guidelines. There could have been another ten years in effect added to the maximum under Count One. So that's what you get, and you put those two together and then you get this recommended.

In this case, they are asking the Court to bind itself.

And in asking the Court to bind itself, what the counsel are, in fact, saying is we think we can wrap this case up with a lot less travail for everybody else if you will -- the defendant is willing to take this sentence, if you are willing to accept it. So that's the context in which I get this case.

Do I think that the defendant is a -- a bad actor in a serious way? You will hear me say, Of course he is. There is no question about that. And I will say more about that in specific detail.

The question really is, with regard to the sentence that I impose, is that going to be commensurate with who this person is? And not just who this person is, I want to be very emphatic about this, this is not a sentencing that deals just with the defendant. This is a sentencing that deals with the defendant's family, and, frankly, for me, more importantly, the victim's family.

So when you hear a lot of pleas -- and counsel for the defendant does a good job arguing on behalf of him and why he should be treated in a special way -- he's only one part of the equation for me. He is not the only person on trial, if you will, right now, and that's a very important way in which I visit -- envision sentencing.

And so I look at the sentencing factors, and there are -under the statutes, 18, United States Code, Section 3553, there
are a number of factors that the Court is supposed to look at
now. And bear in mind I have got a maximum of 144 months per
the agreement with the parties that I said I would bind myself
to. The question is: Is that reasonable? Should it be less
than the 144?

Well, here are the factors that the Court looks at in connection with a sentence like this. First, what is the seriousness of the offense? Well, this is an offense where a deadly drug was sold by somebody that resulted just immediately in the death of the victim. Now, whether the victim should

have been using drugs, probably not. There is no -- not much to say for that, but the victim did not buy into his own death. And this is a serious epidemic, really, where fentanyl has been responsible for deaths not just in this case.

So there is a huge responsibility on the part of those who would deal with this drug, who would sell it to be deemed accountable for what they have done, for the deaths that they have caused. This is not a -- a straightforward drug distribution case, a straightforward gun case.

And even the cases cited by Ms. Fitzgibbons that were all death cases which show sentences of five years, six years, seven years, I can't accept those cases in any way bearing on this case. I can't imagine what the facts were where a judge would give five years to somebody who sold a drug and the person immediately died. That can't be those cases, and if they were, I radically disagree with any judge who would have said that. I think they didn't. But in any event, that's the way I deal with this. This is a very serious case, serious from the standpoint of the victim's family, serious from the standpoint of the community. A terrible problem.

And then I look next at the situation of the defendant; I need to promote respect for the law; and there is a punishment element as well.

Look at this defendant, 25 years old, about to be 26.
What a record for somebody 26. I hear all these deprivations

that he claims, whether they are physical, emotional, or otherwise, and somehow, that is meant to suggest that I ought to be merciful.

Well, my job is to, number one, it seems me to, protect the community from the likes of the defendant. That's you, Mr. Keys. I don't know what you are capable of. At 25, you have run up a record here which is terrible, period. No more needs to be said about that. You are committing crimes from the time you are 11, from what I see, and you are just in and out of system -- the system. And sometimes you are punished, sometimes you get a sentence that goes forward -- rather, a prosecution that goes forward and too much, you have a prosecution that never goes forward, and here you are and you are committing crimes when you are on some sort of probation or supervised release for committing crimes. I mean, there is just no end to what you have done.

To stand up now and say, verbally or in writing, I'm sorry doesn't cut it. It doesn't make it. You have got a lifetime, I mean a long time to consider whether you are -- you merit any particular compassion because you don't with me. You don't. I want that very clear. I am speaking for the community now. I worry about you being out and about.

And I worry about young men who sell fentanyl, and I worry about young men who are in and out of the criminal system before they are 25 and there is a long record ahead of them.

And then to hear simply that there are issues in their background, I regret that there are, and to the extent that there can be accommodation for someone like you when you are in custody, whether it's mental health or drug testing or whatever, fine.

First and foremost, you have created a danger to the community. First and foremost, you have basically devastated a family. And I have read the reports, the statements of each of the father, sister, and brother who spoke before they spoke today, so you hear that. So this is why this case is not just about you, Mr. Keys. It's about them. It's about other communities who would be affected by what you have done.

So there is that issue not only of deterring you but of deterring others who would be like you who did what you do. The main thing, get you out of circulation. And whether we call it punishment or not, in some ways, it's academic because you are going to be out of circulation for a considerable period of time. And to the extent that we can accommodate, while you are in custody, your needs, mental health, emotional, or otherwise, fine, we will do so. But mainly it's to, it seems to me, to deter you and recognize the seriousness of the offense and deter others.

So my sentence for Count One should be one that you could understand rather clearly. I sentence you to 144 months, and that will be consecutive to any sentence that you are currently

serving as imposed by the Circuit Court for St. Mary's County. And I might say when I consider the fact that you have a 13-and-a-half-year sentence from the Circuit Court for St. Mary's County, if all those years are, in fact, served, and add them to the 144 months that I am serving, then we are getting up into the range, frankly, the guideline range that would be right for you anyway notwithstanding the fact that the Court accepted the binding plea. There is still a lot of time for you to serve both in the state system and the federal.

So it's clear that the 144 months for Count One and then the 120 months concurrent in this system, but consecutive to anything in the state system, will give you the substantial sentence that you deserve.

I will put you on supervised release for a period of three years as to Count One and then consecutive -- sorry, concurrent as to Count Two on supervised release. And there will be terms and conditions of supervised release which I will go over with you in a moment.

There is a special assessment of \$200 due and payable at this time.

There is a restitution of \$12,458 due and payable to William Woodward, and that will be paid, I will recommend, in full immediately insofar as cash assets were seized from the defendant.

Now, Ms. Collins, that's something you will have to take

up with the -- your restitution bureau, whatever it's called, in your department, but that's what the Court is ordering. And then thereafter, 50 percent of any wages you earn while in the prison system would be applied to whatever are due and payable at this time. The due and payable would be out of assets that you have, and if that's not sufficient, and it looks like it won't be -- I think there was some \$7,000, plus or minus, that was seized. It's a little more than 12,000 -- almost \$12,500 ordered in restitution.

And then there is a forfeiture provision that the Court has been asked to sign. I don't think there was a preliminary order in this case. But the forfeiture order was the money assets, the \$7,080.

There were as well I think a weapon of some sort,

Ms. Collins. I am looking at this now. I don't see a weapon
mentioned in the preliminary order of forfeiture. I have the
money assets -- money assets and property. It says there were
some other subject property seized during the search at the
defendant's residence. I don't see what they are -- where they
were -- it was a gun or more?

MS. FITZGIBBONS: It's listed in paragraph 13 of the plea agreement, Your Honor. There is specific --

THE COURT: Oh, it's in the plea agreement. All right. Oh, it's not in the -- all right. It's in the plea agreement. I will have to look at that for a moment. It's not

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in the forfeiture order, which, for the record, looking at the
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 2
    plea agreement just at paragraph 13 -- all right.
                                                       $7,080.
 3
    There was also a firearm and ammunition forfeit to the Bureau
    of Alcohol, Tobacco, Firearms & Explosives on or about August
 4
    13, 2021, one Polymer 80 Model PF940C 9 millimeter handgun and
 5
    a 30-round magazine contained therein, and then 35 rounds of 9
6
 7
    millimeter ammunition that would also be forfeit.
8
          I don't know whether -- I have the preliminary order of
    forfeiture, Ms. Collins. I don't have those recited in the
            If there is a final order of forfeiture that were to
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11
    contain that language, I would be prepared to sign it.
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              MS. COLLINS: So, Your Honor, just to clarify, the
    reason those are not included is that they were
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    administratively forfeited, so they don't need to be included
    in the Court's forfeiture order because that was done through
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16
    the administrative process.
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              THE COURT: Very well. The point is the Court now,
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    to the extent that they have not needed to be formally ordered
19
    forfeit, the Court does so now.
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              MS. COLLINS: Thank you.
21
              THE COURT: However it goes forward administratively,
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    that's another matter.
          The Court imposes no fine in the case.
23
24
          The forfeiture, I have spoken about.
25
          The restitution, I have spoken about.
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And then I want to be clear again that the payment of the funds to the victim's family should be in full immediately insofar as cash assets were seized from the defendant, and then 50 percent of any wages earned in accordance with BOP Financial Responsibility Program.

Now, with regard to the -- the Court, with regard to the sentence, will direct that the defendant be designated to FCI Petersburg or Beckley or Hazelton.

Now let me go over the conditions of supervised release.

There are mandatory conditions, first of all, and this is

directed to you, Mr. Keys, so that you know.

You shall not commit any other crime, federal, state, or local. I guess I need to repeat that to you because I don't think you got the message last time you probably were told by another judge: No crimes while you are on supervised release. And there you went and did it. I am telling you again, and if you are ever -- I don't know whether you will be back before the Court in my time, but whatever judge may see you in future, you will be reminded emphatically if that's what you do once you are out.

You must not unlawfully possess a controlled substance.

You must refrain from any unlawful use of a controlled substance and submit to an appropriate drug test within 15 days of release from prison; make restitution as indicated in accordance with what I have ordered earlier; cooperation in the

collection of DNA as directed by your probation officer.

The standard conditions of supervision are that you report to your probation officer as directed and that you answer the questions truthfully that are put to you.

You must report to your probation officer within 72 hours of your release from prison, and you will be told where to report.

Any instructions that you get from your probation officer must be followed by you.

You must not knowingly leave this district, that is, Maryland, where you are authorized to reside without first getting permission of the Court or Probation.

Again, as I have said, you have to truthfully answer questions put to you by Probation, live in a place approved by Probation, and you have to get the permission of Probation to change your address at least ten days in advance.

You have to allow Probation to visit you wherever you may reside and seize any items that are in plain view that are there that are contraband.

You must, to the extent possible, attempt to work full time and so on.

You must not communicate or interact with anyone you know who is engaged in criminal activity. And if you know someone has been convicted of a felony, you must not knowingly communicate with that person unless you have obtained approval

from your probation officer.

If you happen to be arrested or questioned by a law enforcement officer, you have to notify that officer within 72 hours.

This is an item which, again, bears repeating three times. I will say it once, but it's important: You must not own, possess, or have access to any firearm, ammunition, destructive device, or other dangerous weapon. That's it, period. No ifs, ands, and buts.

You must not make any agreement with an enforcement agency to act as a confidential human source or informant without first getting permission of the Court.

And if it's determined that you pose a risk to any other person or organization, the probation officer may require you to advise that person of the risk and can then follow up to make sure you have done so.

And, of course, as always, you follow the instructions of the probation officer as to the conditions of supervision.

Now, there are a few special conditions of supervision that are added to that. Among the special conditions are, first of all, that you pay the special assessment that has been made earlier of the \$200.

You must participate in a mental health treatment program and follow the rules and regulations of that program. I am recommending mental health treatment while you are also in

custody. You must also take any mental health medications as appropriate.

There should also be substance abuse testing to see if you have used a substance abuse -- a substance of any sort that's prohibited, and then participate in a treatment program to that extent possible.

Ms. Fitzgibbons, I think you asked that the defendant also, when he is in custody, participate in a vocational program, which I will also order to the extent that I can recommend anyway to the Bureau of Prisons that he do so.

Beyond that, I think that covers all issues of the sentencing except to notify you that, although I think there probably was a waiver -- I don't have the plea agreement in front of me -- you have the right to appeal, but to the extent that you feel there is any appealable issue, you have 14 days to notice your appeal. Ms. Fitzgibbons can tell you more about that.

Anything more from the government, Ms. Collins?

MS. COLLINS: No, Your Honor.

THE COURT: Ms. Fitzgibbons, anything more from you?

MS. FITZGIBBONS: No, Your Honor. Thank you.

THE COURT: All right, Mr. Keys. A long time to think about it. All right. Thank you. We are in recess.

(The proceedings were concluded at 3:42 p.m.)

CERTIFICATE

I, Renee A. Ewing, an Official Court Reporter for the United States District Court for the District of Maryland, do hereby certify that the foregoing is a true and correct transcript of the stenographically reported proceedings taken on the date and time previously stated in the above matter; that the testimony of witnesses and statements of the parties were correctly recorded in machine shorthand by me and thereafter transcribed under my supervision with computer-aided transcription to the best of my ability; and that I am neither of counsel nor kin to any party in said action, nor interested in the outcome thereof.

Renee A Ewing

Renee A. Ewing, RPR, RMR, CRR Official Court Reporter January 30, 2023